MONTANA LEGISLATIVE HISTORY

Chapter 66 19 89

Bill H 123 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-25	C	Hearing Date(s)	2-6	C
		C		2-8	C
		C			C
		C			C
Date Out	1-25	C	DATE OUT	2-8	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 108	1-10	1-17	1-18			1-18					
HB 97	1-11	1-26	1-26			1-26					
HB 112	1-11	1-19	TABLED	ON 2-9							
HB 122	1-12	1-19	1-25	1-25							
HB 123	1-12	1-25	1-25	1-25							
HB 127	1-12	1-25	1-25	1-25							
HB 134	1-13	1-25	TABLED	ON 1-25							
HB 135	1-13	1-19	1-19	1-19							
HB 146	1-13	1-19	1-19			1-19					
HB 147	1-13	1-26	1-26	1-26							
HB 152	1-13	1-25	1-25	1-25							
HB 153	1-14	1-24	TABLED	ON 1-24							
HB 154	1-14	1-24	1-30			1-30					
HB 155	1-14	1-24	1-30			1-30					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

HOUSE BILL NO. 123

INTRODUCED BY SPAETH, MAZUREK, ADDY, MERCER, COBB

IN THE HOUSE

JANUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 12, 1989	FIRST READING.
JANUARY 25, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 26, 1989	PRINTING REPORT.
JANUARY 27, 1989	SECOND READING, DO PASS.
JANUARY 28, 1989	ENGROSSING REPORT.
JANUARY 30, 1989	THIRD READING, PASSED. AYES, 95; NOES, 3.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 9, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
FEBRUARY 11, 1989	SECOND READING, CONCURRED IN.
FEBRUARY 14, 1989	THIRD READING, CONCURRED IN. AYES, 44; NOES, 3.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

FEBRUARY 27, 1989	PASSED CONSIDERATION FOR THE DAY.
FEBRUARY 28, 1989	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 1, 1989	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 123

INTRODUCED BY Spaeth, Mercer, Cobb, Molnar, Kelly

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Uniform Enforcement of Foreign Judgments Act".

NEW SECTION. **Section 2.** Definition. In [this act], "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

NEW SECTION. **Section 3.** Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

NEW SECTION. **Section 4.** Notice of filing. (1) At the time of the filing of a foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice must include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk does not affect enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed under [section 3] shall issue until 20 days after the date the judgment is filed.

NEW SECTION. **Section 5.** Stay. (1) If the judgment debtor shows a district court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted, the court shall stay

INTRODUCED BILL
HB 123

enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of a judgment that is required in this state.

NEW SECTION. **Section 6.** Fees. Any person filing a foreign judgment shall pay to the clerk of court a fee of $60. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

NEW SECTION. **Section 7.** Optional procedure. The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under [this act] remains unimpaired.

NEW SECTION. **Section 8.** Uniformity of interpretation. [This act] must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 25, 1989, at 8:07 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Mary McDonough

Members Absent: None

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 134

Presentation and Opening Statement by Sponsor:

Rep. Jan Brown, House District 46 stated that HB 134 provides that in joint custody matters the judge prohibit children under the age of 14 years old to visit a foreign country without the permission of the other parent. She stated that there were proponents that wished to speak on the bill and reserved the right to close.

Testifying Proponents and Who They Represent:

Charles White, Helena

Proponent Testimony:

Charles White stood in support of HB 134 and presented written testimony (EXHIBIT 1).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

HEARING ON HOUSE BILL 123

Presentation and Opening Statement by Sponsor:

Rep. Spaeth stated that HB 123 is an act adopting the uniform enforcement of foreign judgments act. He read through the bill for the Committee and stated that there were proponents that wished to testify.

Testifying Proponents and Who They Represent:

Robert E. Sullivan, Missoula, Montana
Allen Chronister, State Bar Association

Proponent Testimony:

Robert Sullivan of Missoula stated that originally a recommendation is enacted by the legislative body for filing for a foreign judgment. This act would reduce court delays, etc. and urged the Committee's approval.

Allen Chronister stood in support of the bill and urged the Committee to give it a DO PASS recommendation.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 123

Motion: A DO PASS motion was made by Rep. Addy, motion seconded by Rep Strizich.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and PASSED unanimously.

HEARING ON HOUSE BILL 127

Presentation and Opening Statement by Sponsor:

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 25, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 123 DATE JANUARY 25, 1989

SPONSOR REP. SPAETH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Robert E. Sullivan	112 Hillcrest Loop Missoula Mt	X	
Allen Chronister	State Bar	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

January 25, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 123 (first reading copy -- white) do pass .

Signed: _____

Dave Brown, Chairman

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-ROSEMARY JACOBY
NORMAL SCHEDULE==> SITE: ROOM 325
COMMITTEE--(S) JUDICIARY
DAYS: M,T,W,T,F TIME: 10:00 A.M.
OFFICE--ROOM 412

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL		REFER DATE	LATEST DATE/ACTION ON BILL	
			SPONSOR: EUDAILY, RALPH	TITLE-CODE COMMISSIONER BILL
HB 13		01/25	03/13--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/13/89
			SPONSOR: QUILICI, JOE	TITLE-GENERALLY AMEND AND FINE TUNE THE CRIME VICTIMS COMPENSATION ACT
HB 27		01/21	03/13--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: CODY, DOROTHY	TITLE-SEXUAL CRIME RESULTING IN CHILD'S DEATH AND AGGRAVATING CIRCUMSTANCE
HB 38		01/13	03/06--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/06/89
			SPONSOR: EUDAILY, RALPH	TITLE-UNIVERSITY OPTIONAL RETIREMENT BANKRUPTCY EXEMPTION
HB 57		02/28	04/24--(H) DIED IN PROCESS	
			SPONSOR: MARKS, BOB	TITLE-IMMUNITY FOR PROVIDING EMERGENCY CARE
HB 57		03/16	04/24--(H) DIED IN PROCESS	
			SPONSOR: MARKS, BOB	TITLE-IMMUNITY FOR PROVIDING EMERGENCY CARE
HB 59		01/21	02/15--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: SPAETH, GARY	TITLE-FINGERPRINTING OF, AND CRIMINAL RECORD CHECKS OF, STATE BAR APPLICANTS
HB 71		01/16	03/22--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: WHALEN, TIM	TITLE-REMOVE LANGUAGE PROHIBITING SOLICITING VOTER INFORMATION WITHIN 200 FT
HB 80		01/14	03/15--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/15/89
			SPONSOR: STRIZICH, BILL	TITLE-DISCLOSE CHILD ABUSE AND NEGLECT RECORDS TO CERTAIN PROBATION OFFICERS
HB 87	R	01/26	04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/08/89
			SPONSOR: KILPATRICK, TOM	TITLE-CHANGE DEFINITIONS IN CHILD ABUSE, NEGLECT, AND DEPENDENCY LAW
HB 91	R	01/21	02/24--(H) CHAPTER NUMBER	EFFECTIVE DATE: 07/01/89
			SPONSOR: ROTH, RANDE	TITLE-INCREASE FEES FOR BIRTH AND DEATH CERTIFICATES AND FOR COPIES OF RECORDS
HB 97		02/02	03/21--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: KILPATRICK, TOM	TITLE-GRANT CITY COURT PWR TO ISSUE TEMPORARY RESTRAINING ORDER FOR DOMESTIC ABUSE
HB 107		01/25	02/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: SPAETH, GARY	TITLE-RAISE JUSTICE'S COURT FILING FEE
HB 113		01/23	04/01--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/01/89
			SPONSOR: REHBERG, DENNIS	TITLE-CLARIFY RECOMMENDATION OPTIONS OF YOUTH PLACEMENT FACILITIES
HB 115		01/23	02/15--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: MCDONOUGH, MARY	TITLE-ADOPTION FEES AND REPORTS; FINE FOR UNREASONABLE FEES
HB 116		01/25	03/21--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/21/89
			SPONSOR: MCDONOUGH, MARY	TITLE-AMEND ELDER ABUSE PREVENTION ACT TO INCLUDE DEVELOPMENTALLY DISABLED PERSONS
HB 122		02/02	04/12--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: SPAETH, GARY	TITLE-ACTUAL NOTICE TO CERTAIN CREDITORS OF AN ESTATE
HB 123		01/31	03/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: SPAETH, GARY	TITLE-ADOPT UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS' ACT
HB 127		01/31	03/21--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/21/89
			SPONSOR: STICKNEY, JESSICA	TITLE-REDUCE MAXIMUM AGE FOR COMMITMENT UNDER YOUTH COURT ACT FROM 21 TO 19

House BILL NO. 123

INTRODUCED BY Mercer Cobb

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Uniform Enforcement of Foreign Judgments Act".

NEW SECTION. **Section 2.** Definition. In [this act], "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

NEW SECTION. **Section 3.** Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

NEW SECTION. **Section 4.** Notice of filing. (1) At the time of the filing of a foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice must include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk does not affect enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed under [section 3] shall issue until 20 days after the date the judgment is filed.

NEW SECTION. **Section 5.** Stay. (1) If the judgment debtor shows a district court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted, the court shall stay

THIRD READING
HB 123

enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of a judgment that is required in this state.

NEW SECTION. **Section 6. Fees.** Any person filing a foreign judgment shall pay to the clerk of court a fee of $60. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

NEW SECTION. **Section 7. Optional procedure.** The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under [this act] remains unimpaired.

NEW SECTION. **Section 8. Uniformity of interpretation.** [This act] must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 6, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. "Dick" Pinsoneault, John Harp and Bill Yellowtail.

Members Excused: None.

Members Absent: None.

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby.

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 322

Presentation and Opening Statement by Sponsor: Senator Fred VanValkenburg of Missoula, representing District 30, opened the hearing saying it was to revise the media confidentiality act by providing that a person who testifies in a lawsuit against a media entity does not waive the journalist privilege. It comes in answer to a supreme court decision in 1986, Sybil vs. Lee Enterprises, Don Schweneson, reporter for the Missoulian in Flathead County. This was a libel case and Judge Keating decided in the favor of the defendants, but it was overturned in appeal, he said. The Montana Supreme Court said that improper jury instructions had been given and Mr. Schweneson had waived the "shield" law by virtue of taking the witness stand in his own defense. Senator VanValkenburg stated there was a clear distinction in an individual voluntarily giving up a privilege and defending himself, where he does not exclusively give up

Closing by Sponsor: The hearing closed.

DISPOSITION OF SENATE BILL 322

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Brown MOVED that Senate Bill 322 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 123

Presentation and Opening Statement by Sponsor: Representative Spaeth of Joliet, representing District 84, opened the hearing saying its purpose was adopting uniform enforcement of the Foreign Judgments Act.

List of Testifying Proponents and What Group they Represent:

Dean Bob Sullivan, retired deal of the UM Law School
Allen Chronister, Montana State Bar
Bill O'Leary, Montana Banking Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Dean Sullivan said he was one of the Uniform Commissioners of the state of Montana. The bill came out of the Uniform Laws Conference, was promulgated in 1964 and has been passed by 35 states. Each legislative year, the Commission presents suggested legislation to the governor and this was one of those bills, he said. He read from the report (Exhibit 2) and explained how it worked. He said the benefit to the state of Montana was that no second trial was necessary to enforce the judgment. Also, it should reduce the time for judgment and should reduce court congestion and delay. He encouraged passage of the bill.

Allen Chronister said the bill would aid both the courts and the practicing attorneys.

Bill O'Leary said the banking industry wished to appear as a proponent of the bill.

Questions From Committee Members: Senator Pinsoneault wondered if this law was reciprocal. Dean Sullivan said there was no reciprocal provision in the act. But, it is not necessary if dealing with a state that has the law on the books, he stated.

Senator Mazurek said there had been a concern regarding the bill if another state issued a default judgment on a Montana citizen, perhaps for a credit card issued in the other state. He wondered if there should be concern. Dean Sullivan didn't think Montana people would have a lot to fear in the act because, if there were reasons for "staying," they can be filed in a judgment proceeding. He said the scenario could happen, but he didn't think it was likely.

Senator Bishop asked about Section 2 on page 2, the word "promptly". He wondered if the debtor would be notified before someone executed judgment against them. Dean Sullivan said the act provides that a judgment can be filed in the court with the clerk of court giving notice. In the alternative, the judgment creditor could give notice to the debtor. So, he said, adequate notice would be given.

Closing by Sponsor: The sponsor closed the hearing.

DISPOSITION OF HOUSE BILL 123

Discussion: Senator Bishop asked further about the use of the word "promptly". He said it was conceivable that the filed execution at the same time they received the notice. He felt "promptly" was not specific. He felt the judgment debtor may need more time than given.

Amendments and Votes: None

Recommendation and Vote: Senator Mazurek MOVED that HOUSE BILL 123 DO PASS. After Senator Bishop's question on the word "promptly," Senator Mazurek WITHDREW his motion.

HEARING ON HOUSE BILL 107

Presentation and Opening Statement by Sponsor: Representative Gary Spaeth of Joliet, District 84, said the bill was to

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-6-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

Dean Sullivan read from 4.

SENATE JUDICIARY
EXHIBIT NO. 2 P.1
DATE 2-6-87
BILL NO. HB 123

Reciprocal Enforcement of Support
Residential Landlord and Tenant
Rights of Terminally Ill
Simplification of Fiduciary Security Transfers
Simultaneous Death
Status of Convicted Persons
Testamentary Additions to Trusts
Trade Secrets
Transboundary Pollution Reciprocal Access
Transfers to Minors
Trustees Powers
Unclaimed Property

MODEL ACTS

Administrative Procedure
Audio-Visual Deposition (By Supreme Court Rule)

VII. RECOMMENDATIONS FOR ENACTMENT BY 1989 LEGISLATURE

1. Criminal History Records Act. Governs the gathering, maintenance, and disclosure of information on the arrest, prosecution, sentencing and punishment of specific individuals as collected by law enforcement agencies and establishes a central repository for gathering this information from all law enforcement agencies in a state. The act provides for varying levels of access to the information.

2. Disposition of Community Property at Death. Deals with the subtle problem of community property brought into a non-community state, one of life's complications which lawyers would like to pretend does not exist. The act requires that, upon death, assets must be traced to their community of origin, if any.

3. Dormant Mineral Interests. Establishes the criteria by which a severed mineral interest in real estate becomes dormant. Once a mineral interest becomes dormant, it may be merged with the surface interest in an action to quiet title. A mineral interest becomes dormant if there is no actual "use" of the interest for twenty years or more. The term "use" means exploring for or taking minerals, generally, but includes such exercises of ownership as paying taxes on the interest or recording a judgment pertaining to it, as well. Even if a holder of a mineral interest does not use it, the interest can be kept current by filing a "notice of intent to preserve" in the real property records.

4. Enforcement of Foreign Judgments. Article IV, Section 1, of the Constitution of the United States requires each state to give full faith and credit to the official acts and judgments of every other state. The "full faith and

credit" clause unites the states in a very practical way and is meant to prevent abuses of jurisdiction experienced during the period of time when the original states were under the Articles of Confederation. Even though "full faith and credit" is mandatory, the states have never wholly resolved the problem of its implementation. The Act settles one of the problems of states' complying with the U.S. Constitution's full faith and credit clause. It permits enforcement of a judgment of another state upon the mere act of filing it in the office of a Clerk of Court. The act of filing the foreign judgment gives it the effect of being a judgment of the court in the state in which it is filed. The process of enforcement then goes forward as if the judgment were a domestic one.

5. Fraudulent Transfers. Revises the Uniform Fraudulent Conveyance Act of 1918. Creates a class of transfers of property by debtors that is fraudulent to creditors. This class of transfers would, generally, have the effect of depriving creditors of assets that would, otherwise, be available to satisfy debts when the debtor becomes insolvent or is about to become insolvent. Transfers that are intended to defraud creditors, that are made "without receiving reasonably equivalent value" to make the debtor "judgment proof", or that are made "without receiving reasonably equivalent value" when the debtor is insolvent are examples of fraudulent transfers. Such transfers are generally voidable on behalf of creditors. The new Act is more specific on what constitutes fraud and introduces new law on "insider" transactions and on the effect of fraudulent transfers on innocent transferees.

6. Statutory Rule Against Perpetuities. Validates nonvested future interests in property as the common-law "Rule Against Perpetuities" does, by measuring the time for vesting in terms of lives in being plus 21 years. In contrast to the common-law Rule, the Statutory Rule does not invalidate future interests that may, even against enormous probabilities, not vest within the prescribed time. The Uniform Rule provides a 90-year period in which de facto vesting of an interest can take place. If an interest actually vests within the 90 years, it is valid, even though its vesting is not, hypothetically, an absolute certainty at the time the future interest is created. The Rule also provides a procedure by which a court may vest interests within the allotted 90-year time to avoid invalidity. In addition, the Rule carefully sets out the kinds of interests that are excluded from the operation of the Perpetuities Rule.

7. Anatomical Gift (1987. The 1987 revision of the original 1969 Uniform Anatomical Gift Act retains the principal provisions of the earlier Act, that of a "document of gift" which permits any competent adult to

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 8, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary

Announcements/Discussion: There was none.

HEARING ON SENATE BILL 338

Presentation and Opening Statement by Sponsor: Senator Joe Mazurek of Helena, representing District 23, opened the hearing on SB 338 saying he introduced the bill at the request of former District Judge Gordon Bennett. The bill would authorize a county fund for victim restitution, he said. Larger counties have seen a growth of restitution being imposed during sentences. Many counties have set up restitution programs and someone has to administer them, he said. Payment is made on a regular basis and a monthly schedule must be set up. In the event there is a sentence with restitution provided, and the victim moves leaving no forwarding address, the restitution money received can be placed in a fund established under the bill. This fund would be called the County Restitution Fund. The law would require that restitution would be given to the victim once he is relocated by those administering the fund.

Money accumulated in the restitution fund could also be used to pay victims, when the offender is unable to

Amendments and Votes: Senator Harp MOVED the amendments. The Motion CARRIED UNANIMOUSLY.

Senator Harp MOVED a SUBSTITUTE MOTION of an amendment to the Amendments he had proposed: Inserting the Attorney General's suggested language (see discussion above). The MOTION CARRIED UNANIMOUSLY.

Senator Yellowtail MOVED that "or" be removed. The MOTION PASSED by a vote of 8 to 2 with Senators Harp and Crippen voting NO.

Recommendation and Vote: Senator Harp MOVED that Senate Bill 255 DO PASS AS AMENDED. The MOTION CARRIED by a vote of 6 to 4 with Senators Bishop, Halligan, Mazurek and Yellowtail voting NO.

DISPOSITION OF SENATE BILL 123

Discussion: Senator Bishop said the amendment (Exhibit 8) would prevent distribution of property for at least 30 days. This would be fair to both debtor and creditor, he felt. Senator Mazurek spoke in favor of the amendments, saying Nevada and New York had used this law. He said that, even though a bank account might be seized, a person would have 30 days to fight it.

Senator Halligan wondered why the insurance companies hadn't submitted information regarding fraud of claims and with statistics. Other senators felt they should have testified.

Senator Brown felt the people should have another opportunity to vote for the CI 30 issue. Valencia said passing this bill will not revive any law passed last session because it would be judged as it existed at that time.

Amendments and Votes: Senator Bishop MOVED the Amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 123 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 312

Discussion: None

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-8-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		✓
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 8
DATE 2-8-89
BILL NO. HB 123

Amendments to House Bill No. 123
Third Reading Copy (BLUE)

Requested by Senators Bishop and Mazurek
For the Committee on Judiciary

Prepared by Valencia Lane
February 7, 1989

1. Page 2, lines 1 through 21.
Strike: section 4 in its entirety
Insert: "NEW SECTION. Section 4. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on his behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to his attorney of record, if any, each at his last-known address by certified mail, return receipt requested. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution shall not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing."

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 ~~Senate~~ House Bill No. 123 Time #1

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN.YELLOWTAIL		
SEN. CRIPPEN		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Bishop Moved Amendments UNAN

May DPA UNAN

SF-3 (Rev. 1987)

SENATE STANDING COMMITTEE REPORT

February 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 123 (third reading copy -- blue), respectfully report that HB 123 be amended and as so amended be concurred in:

Sponsor: Spaeth (Mazurek)

1. Page 2, lines 1 through 21.
Strike: section 4 in its entirety
Insert: "NEW SECTION. Section 4. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on his behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to his attorney of record, if any, each at his last-known address by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution must not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing."

AND AS AMENDED BE CONCURRED IN

Signed: Bruce D. Crippen, Chairman

SENATE

scrhb123.209

HOUSE BILL NO. 123

INTRODUCED BY SPAETH, MAZUREK, ADDY, MERCER, COBB

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Uniform Enforcement of Foreign Judgments Act".

NEW SECTION. **Section 2.** Definition. In [this act], "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

NEW SECTION. **Section 3.** Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

~~NEW SECTION. Section 4. Notice of filing. (1) At the time of the filing of a foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor and the judgment creditor.~~

~~(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice must include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk does not affect enforcement proceedings if proof of mailing by the judgment creditor has been filed.~~

~~(3) No execution or other process for enforcement of a foreign judgment filed under [section 3] shall issue until 20 days after the date the judgment is filed.~~

NEW SECTION. **SECTION 4.** NOTICE OF FILING. (1) AT THE TIME OF THE FILING OF THE FOREIGN JUDGMENT, THE JUDGMENT CREDITOR OR HIS ATTORNEY SHALL FILE WITH THE CLERK OF THE COURT AN AFFIDAVIT SETTING FORTH THE NAME AND LAST-KNOWN

POST-OFFICE ADDRESS OF THE JUDGMENT DEBTOR AND THE JUDGMENT CREDITOR. THE AFFIDAVIT MUST ALSO INCLUDE A STATEMENT THAT THE FOREIGN JUDGMENT IS VALID AND ENFORCEABLE, AND THE EXTENT TO WHICH IT HAS BEEN SATISFIED.

(2) PROMPTLY UPON FILING THE FOREIGN JUDGMENT AND AFFIDAVIT, THE JUDGMENT CREDITOR OR SOMEONE ON HIS BEHALF SHALL MAIL NOTICE OF THE FILING OF THE JUDGMENT AND AFFIDAVIT, ATTACHING A COPY OF EACH TO THE NOTICE, TO THE JUDGMENT DEBTOR AND TO HIS ATTORNEY OF RECORD, IF ANY, EACH AT HIS LAST-KNOWN ADDRESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE NOTICE MUST INCLUDE THE NAME AND POST-OFFICE ADDRESS OF THE JUDGMENT CREDITOR AND THE JUDGMENT CREDITOR'S ATTORNEY, IF ANY, IN THIS STATE. THE JUDGMENT CREDITOR SHALL FILE WITH THE CLERK OF THE COURT AN AFFIDAVIT SETTING FORTH THE DATE UPON WHICH THE NOTICE WAS MAILED.

(3) THE PROCEEDS OF AN EXECUTION MUST NOT BE DISTRIBUTED TO THE JUDGMENT CREDITOR EARLIER THAN 30 DAYS AFTER THE DATE OF MAILING THE NOTICE OF FILING.

NEW SECTION. **Section 5. Stay.** (1) If the judgment debtor shows a district court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the

judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of a judgment that is required in this state.

NEW SECTION. **Section 6. Fees.** Any person filing a foreign judgment shall pay to the clerk of court a fee of $60. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

NEW SECTION. **Section 7. Optional procedure.** The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under [this act] remains unimpaired.

NEW SECTION. **Section 8. Uniformity of interpretation.** [This act] must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

-End-